

Nonconforming Regulation Options and Recommendations

**Revised based on the May 6, 2003 Advisory Committee
Meeting - Includes Committee Preferences**

Guiding Principles for Regulation of Structures Located Entirely Within the **Primary Buffer**

- No expansion on any structures in the primary buffer
- Ordinary maintenance or repair that does not require a permit, does not require mitigation; any repair or modification that requires a permit, requires mitigation measures
- Pre-existing structures will continue to exist until the owner decides to undertake major reconstruction; at that point, relocation to a compliant location would be required
- A mitigation end point will be defined incorporating credits for good stewardship

Nonconforming Regulation Proposed Definitions

Revised at the May 6, 2003 Advisory
Committee Meeting

Structure means:

Option 1: Any man-made object with form, shape and utility, **that is constructed or otherwise erected, attached to** or permanently or temporarily placed, either upon the ground, river bed, stream bed or lakebed. **[modification of NR116.03(45)] - 13 members preferred this option with above modifications**

Option 2: Any man-made object with form, shape and independent utility that is constructed or otherwise erected or attached to or permanently placed upon the ground above the ordinary high water mark. For the purposes of this chapter, the term “structure” does not include: vegetation including landscaping and gardens; earthwork including grading, filling, berms, terraces and retaining walls; stormwater management devices; and erosion control devices. **[Kent proposal] - 6 members preferred this option**

2 members did not like either definition

Structural Components means:

Option 1: Supporting elements of a structure such as wall studs, columns, rafters, joists, beams, concrete blocks, poured concrete, etc., regardless of their cost. [Mitchell proposal] **5 members preferred this option**

Option 2: Supporting elements of a structure other than the foundation, if any. Supporting elements includes, but is not limited to, wall studs, rafters, joists, posts, columns, beams, and girders. [DNR staff proposal] - **Most members wanted the foundation included which led to the creation of option 3**

Option 3: Supporting elements of a structure. Supporting elements includes, but is not limited to, wall studs, rafters, joists, posts, columns, beams, and girders. [AC definition] **14 members preferred this option**

Major Reconstruction means: AC preferences listed on the next slide

Option 1: Reconstruction or replacement of 25% or more of the structural components of a building. [based on Bayfield County ordinance and comments from several advisory committee members]

Option 2: Replacement of 30% or more of the structural components of the outside walls and roof, or of the basement of the structure. [Mitchell proposal]

Option 3: Any improvement, repair, or modification that is in excess of 50% of the structure's assessed value at the time the improvements, repairs or modifications begin. [Pielsticker proposal]

Option 4: The removal and replacement within the existing footprint of all structural components of a structure with the exception of the foundation [Larson proposal]

Option 5: Reconstruction or replacement of 50% or more of the linear perimeter of the structure [Dresen proposal - added at May 6th meeting]

AC Preferences

Major Reconstruction means:

Combination of Options 1 and 5: 11 members preferred this combination

Combined Option would read: Reconstruction or replacement of 25% or more of the structural components of a building or 50% or more of the linear perimeter of the structure whichever is less.

Option 4: 10 members preferred this option

Ordinary Maintenance and Repair means:

Option 1: Work that is necessary to maintain or restore a building for its existing use, including the reconstruction or replacement of deteriorated structural components as long as the work does not constitute "major reconstruction." Ordinary maintenance and repair includes such things as painting and staining; repair or replacement of siding, windows, sky lights, doors, vents, insulation, shutters, gutters, flooring, shingles and other roofing materials; replacement or upgrading of plumbing, heating or electrical components, and other internal improvements within the building envelope that don't involve alteration or replacement of structural components. [DNR staff proposal] **1 member preferred this option**

Option 2: Physical activities, including but not limited to painting, caulking and structure element replacement, undertaken to protect and preserve a structure. [Deschane proposal] **1 member preferred this option**

Ordinary Maintenance and Repair continued:

Option 3: Actions necessary to continue or restore the safe use of a structure which has been damaged or has deteriorated through the natural aging and wear and which does not result in major reconstruction, replacement or a significant increase in value. Such actions may include, but are not limited to painting and staining, repair of exterior windows, sky lights, doors, vents, siding, insulation, shutters, gutters, flooring, shingles, roofing materials, the repair of walls, or the foundation, and internal improvements within the structural envelope without doing a structural alteration. [based on Bayfield County Ordinance definition] **1 member preferred this option**

Option 4: Anything less than major reconstruction. [Mitchell proposal] **18 members preferred this option**

Permit means:

An administrative permit (i.e., a building permit, zoning permit, etc.) that is required by a county zoning ordinance “for all new construction, development, reconstruction, structural alteration or moving of buildings and structures.” **AC recommendation to utilized a partial definition of permit in NR 115.05(6)(c)**

Mitigation means:

Option 1: Actions taken to minimize adverse impacts of development.
[DNR staff proposal revised at AC meeting by members] - **unanimous support**

Footprint means:

Option 1: That portion of a lot covered by a building or structure at the surface level, measured on a horizontal plane. [Bayfield County Ordinance definition]

Habitable Living Area means:

Option 1: The floor area of those portions of a building that can be used for human habitation, regardless of whether or not the area is actually used for human habitation at a particular time. The term "habitable living area" does not including detached garages, but it may include basement areas that are suitable for use as living space. [DNR staff proposal]

Regulations to Implement Guiding Principles for Structures Entirely Within the **Primary Buffer**

For principal and accessory structures located entirely within the primary buffer, the Department recommends that the following provisions apply:



Primary Buffer Recommendations:

- Unlimited ordinary maintenance and repairs are allowed, including the repair or replacement of existing structural components; as long as the work does not constitute “major reconstruction.”



Primary Buffer Recommendations:

- Replacement structures must be built in a compliant location



Primary Buffer Recommendations:

- “Major reconstruction” is not allowed unless a variance is granted or the structure is moved to a compliant location
- Structures may not be expanded



Primary Buffer Recommendations:

- The primary buffer must be preserved or restored if a permit is required for work on an existing structure
- An area 15-feet wide around the structure may be maintained in lawn



Mitigation

In addition to preserving or restoring the primary buffer, the property owner must also

select two of the following mitigation practices to implement or maintain:

- restore a 15 foot wide buffer on both side lot lines
- Infiltration practices - such as rain gardens - to address stormwater runoff
- removal of accessory structures in the primary buffer and no new accessory structures

Mitigation Options - Continued

- Removal of accessory structures in the secondary buffer and no new accessory structures
- Visually inconspicuous building materials, such as earth toned materials
- Removal of riprap, concrete seawalls, or artificial sand beaches
- Other mitigation practices listed in the shoreland ordinance that have been approved by the Department

Mitigation End-Point:

For future projects that would otherwise require mitigation, if the primary buffer has been preserved or restored and the property owner continues to maintain the primary buffer and at least two of the mitigation measures outlined above, implementation of additional mitigation practices will not be required

Committee concluded that we will need to do some more work on mitigation in an upcoming meeting

Regulations to Implement Guiding Principles in the **Secondary Buffer**

For principal and accessory structures located entirely within the **secondary buffer**, the Department recommends that the following provisions apply:



- Unlimited ordinary maintenance and repairs are allowed; including the repair or replacement of existing structural components; as long as the work does not constitute “major reconstruction.”



- Replacement structures must be built in a compliant location



- “Major reconstruction” is not allowed unless a variance is granted or the structure is moved to a compliant location
- A **limited expansion** for principal structures would be allowed if conditions are satisfied
- Pre-existing structures will continue to exist until the owner decides to undertake “major reconstruction” or to expand beyond the limited expansion allowed in the secondary buffer
- The primary buffer must be preserved or restored if a permit is required for work on an existing structure
- Accessory structures may not be expanded

Mitigation

In addition to preserving or restoring the primary buffer, the property owner must also

select two of the following mitigation practices to implement or maintain:

- restore a 15 foot wide buffer on both side lot lines
- Infiltration practices - such as rain gardens - to address stormwater runoff
- removal of accessory structures in the primary buffer and no new accessory structures

Mitigation Options - Continued

- Removal of accessory structures in the secondary buffer and no new accessory structures
- Visually inconspicuous building materials, such as earth toned materials
- Removal of riprap, concrete seawalls, or artificial sand beaches
- Other mitigation practices listed in the shoreland ordinance that have been approved by the Department

Mitigation End-Point:

For future projects that would otherwise require mitigation, if the primary buffer has been preserved or restored and the property owner continues to maintain the primary buffer and at least two of the mitigation measures outlined above, implementation of additional mitigation practices will not be required

Committee concluded that we will need to do some more work on mitigation in an upcoming meeting

Limited Expansion of Principal Structures

To qualify for limited expansion, the existing principal structure must be a minimum of:

- A. No minimum size requirement - 9 members preferred this option
- B. 500 square feet - 2 members preferred this option
- C. 600 square feet
- D. 750 square feet
- E. County's current minimum house size or if none exists, 750 s.f. - 7 members preferred this option

Expansion Options in Secondary Buffer

- A - No expansion - 4 members preferred this option
- B - One-time expansion allowed to a cap on square footage
- C - Cumulative expansion allowed to a cap on square footage - 15 members preferred this option

Limited Expansion of Principal Structures

The existing principal structure may not be expanded beyond:

- A. No expansion allowed - 4 members preferred this option
- B. Limits established by the county (this option was developed by AC members and it is the Department legal staff opinion that there may be a problem with this option due to a statutory requirement to provide minimum standards to the counties.) 7 members preferred this option
- C. Habitable living space not to exceed 1,500 square feet - 2 members preferred this option
- D. 50% of existing footprint up to 1,900 square feet and 2,500 square feet for habitable living area (based on Bayfield County's ordinance) 5 members preferred this option

Limited Expansion of Principal Structures

For a limited expansion, the existing principal structure may be expanded according to the following provisions:

- A. Landward of the existing structure
- B. Parallel to the existing structure
- C. A second story addition to the existing structure instead of a horizontal expansion
- D. Prioritize based on lot with C first, then A and lastly B
- E. Landward or second story based on property owner preference
- F. Expansion location based on site characteristics and determined by the county to be consistent with the purposes of the rule. **Option F was the Unanimous preference by committee members**

Options for Structures that Straddle Setback Lines

- A: These structures are treated like structures entirely within the most restrictive buffer area. 1 member preferred this option
- B: Limited expansion on the landward side of structures that are partially located within the primary buffer will be allowed if secondary buffer expansion limits are satisfied and there is no complying location on the property for an enlarged structure.
- C: The regulations for the zone where the proposed modification is located will prevail including mitigation requirements; for expansions, the secondary buffer size limitations apply.
- D: The regulations for the zone where the proposed modification is located will prevail including mitigation requirements regardless of where the expansion is located. 17 members preferred this option